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No. 93-2018

In The

Supreme Court of the United States

October Term, 1994

STATE OF KANSAS, *et al.*,

Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

BRIEF FOR RESPONDENT DALLAS-FORT WORTH INTERNATIONAL AIRPORT BOARD IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the "Love Field Amendment" (Section 29, Pub. L. No. 96-192, 94 Stat. 35 (1980)) violates the Ports Preference Clause (U.S. Const. art. 1, § 9, cl. 6) of the Constitution.

2. Whether the "Love Field Amendment" impermissibly abridges the right to interstate travel.

3. Whether the restrictions on advertising in the "Love Field Amendment" violate the First Amendment.

RULE 29.1 STATEMENT

Pursuant to Rule 29.1 of the Rules of this Court, Respondent Dallas-Fort Worth International Airport Board states that it has no corporate parent, subsidiaries, or affiliates, other than the creating municipalities of Dallas and Fort Worth, Texas.

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BRIEF FOR RESPONDENT DALLAS-FORT WORTH INTERNATIONAL AIRPORT BOARD IN OPPOSITION

STATEMENT OF THE CASE

For years, the cities of Dallas and Fort Worth, Texas operated separate airports (Love Field and Redbird in Dallas, Greater Southwest International and Meacham Field in Fort Worth) in fierce competition with each other. This competition to a large degree prevented the cities from agreeing on where to build a new, regional airport, despite the fact that both cities recognized that such an airport was necessary for the continued growth of the region. *See City of Dallas v. Southwest Airlines Co.*, 371 F. Supp. 1015, 1019 (N.D. Tex. 1973) (summarizing the history of the dispute), *aff'd*, 494 F.2d

773 (5th Cir.), *cert. denied*, 419 U.S. 1079 (1974). This rivalry "resulted in unnecessary expense to the carriers as well as the taxpayers and inadequate and incomplete air service to both cities." *Id.* at 1020.

The cities resolved this dispute in the late 1960's by agreeing to jointly fund, through the issuance of approximately $1 billion in bonds, the new Dallas-Fort Worth International Airport ("DFW Airport") and to close their respective existing airports. In this way, all commercial passenger traffic could be directed to a single, regional airport that would best serve the air transportation needs of *both* cities and the region. A site for what was to become DFW Airport was selected midway between Dallas and Fort Worth, approximately 12 miles from Love Field and 18 miles from downtown Dallas. *See Cramer v. Skinner*, 931 F.2d 1020, 1023 (5th Cir.), *cert. denied*, 112 S. Ct. 298 (1991). DFW Airport opened for commercial operation in 1974. All of the airlines serving those airports, except Southwest Airlines, agreed to transfer their operations to DFW Airport. *Id.* Southwest Airlines, which at the time was a wholly intrastate carrier licensed by Texas to operate at Love Field, prevented full implementation of this compromise by securing judicial recognition of its right to continue intrastate operations at Love Field. *Southwest Airlines*, 371 F. Supp. at 1019 (rejecting the request by the cities and regional airport board for a declaratory judgment stating that they could exclude Southwest Airlines from operating at Love Field).

In the wake of airline deregulation, Southwest Airlines expressed its intention to begin interstate air passenger service from Love Field. *Cramer*, 931 F.2d at 1023.

Therefore, in order to preserve the agreement between Dallas and Fort Worth concerning the establishment of DFW Airport and to foster the central role of DFW Airport in the development of the region's air transportation resources, Congress enacted Section 29 of the International Air Transportation Competition Act of 1979, Pub. L. No. 96-192, 94 Stat. 48 (1980) (the "Love Field Amendment"). *See* H.R. Conf. Rep. No. 716, 96th Cong., 2d Sess. at 24, *reprinted in* 1980 U.S.C.C.A.N. 78, 86. The Love Field Amendment and Department of Transportation Order 85-12-81 (Dec. 31, 1985) (the "DOT Order") interpreting the Love Field Amendment achieve this goal by imposing certain restrictions on long-haul interstate passenger operations at Love Field in order to preserve DFW's status as the primary interstate passenger airport for the Dallas-Fort Worth region.[1]

The most important of these restrictions limits direct interstate flights from Love Field to "turn-around service between Love Field and points in the four contiguous states." *Id.* (Hereinafter, the four contiguous states, Louisiana, Arkansas, Oklahoma and New Mexico, shall be referred to as the "Love Field Service Area.").[2] The Love

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[1] The D.C. Circuit previously approved the Department of Transportation's interpretation of the Love Field Amendment, finding it compatible with Congress' purpose "to limit that airport's operations to 'short-haul' service." *Continental Airlines, Inc. v. Department of Transp.*, 843 F.2d 1444, 1453 (D.C. Cir. 1988).

[2] Subsection (a) of the Love Field Amendment permits a certain number of charter flights and unlimited commuter (fewer than 56 passenger) airplane operations. *See* Conference Report at 25, 1980 U.S.C.C.A.N. at 86-87.

Field Amendment places no restrictions on Love Field flights to and from points within Texas. Pursuant to the DOT Order, passengers may travel between Love Field and points beyond the Love Field Service Area by taking two flights: one flight to an airport in the Love Field Service Area and a second flight to any point beyond the Love Field Service Area. Such travelers must purchase a separate ticket for each leg of the journey ("double ticketing") and cannot check their baggage through from Love Field to their final destination. Of course, any traveler to and from the Dallas-Fort Worth region may obtain unrestricted interstate airline services to or from any other state by flying through DFW Airport, located 12 miles from Love Field.

The Love Field Amendment, as construed by the Department of Transportation, also preserves the allocation of long-haul service to DFW Airport and short-haul service to Love Field by prohibiting airlines and travel agents from affirmatively advertising the availability through double-ticketing of connecting service to points beyond the Love Field Service Area. Airlines and travel agents may, however, provide such information in response to questions from travelers. Moreover, only airlines and travel agents are so restricted; others are free to publicize the availability of long-haul interstate travel to and from Love Field.

Petitioners include a number of individuals who would prefer to fly to and from Love Field without the inconveniences imposed by the Love Field Amendment, as well as the Central Travel Agency, the Wichita Airport Authority, and the State of Kansas, which maintains that its employees are inconvenienced by their inability to fly

directly to Love Field from Kansas. Petitioners challenge the constitutionality of the Love Field Amendment on three grounds: (1) that it violates the Ports Preference Clause; (2) that it violates their right of travel; and, (3) that it violates the First Amendment. Both the district court and the court of appeals upheld the constitutionality of the Love Field Amendment on all three grounds. *Kansas v. United States*, 797 F. Supp. 1042 (D.D.C. 1992) (Appendix to Petition ("App.") at 17a), *aff'd*, 16 F.3d 436 (D.C. Cir. 1994) (App. at 1a).

REASONS FOR DENYING THE WRIT

I. THE COURT HAS PREVIOUSLY REFUSED TO REVIEW THE PRECISE QUESTIONS PRESENTED HERE, AND PETITIONERS MAKE NO NEW ARGUMENTS TO JUSTIFY REVIEW IN THIS COURT

Twice before this Court has been asked to issue a petition for a writ of certiorari to review the identical questions presented here, and twice before this Court has declined to issue the writ. *Cramer v. Skinner*, 112 S. Ct. 298 (1991); *Cramer v. Pena*, 113 S. Ct. 2994 (1993). Petitioners raise no arguments here that were not raised in *Cramer*. Moreover, no subsequent decision of this Court, or of any court of appeals, district court, or state court casts doubt on the correctness of the underlying decision or suggests that this case is any more worthy of review than was *Cramer*.

To the contrary, the decision of the court of appeals (and of the district court) below addressed the identical

issues raised in *Cramer* and came to the identical conclusions. Thus this case comes to the Court with complete unanimity among every court that has addressed the questions presented here.[3]

Furthermore, this case presents no issue of national concern. The Love Field Amendment is a unique and narrow piece of legislation designed to resolve a regional dispute that had created in the Dallas-Fort Worth metropolitan area a bottleneck in the nation's interstate air transportation network. The restrictions of the Love Field Amendment affect only a small class of travelers who choose, for reasons of personal convenience, to use Love Field rather than DFW Airport, located just twelve miles away. Quite simply, there is no more reason now to review these issues than there was with respect to either petition in *Cramer*, and the Court should deny this petition as it denied the earlier petitions.[4]

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[3] The United States District Court for the Southern District of California, prior to the *Cramer* decisions, also found that the Love Field Amendment does not violate the First Amendment, the right to travel or the Ports Preference Clause. *Zamutt v. Skinner*, No. 90-0602-B(M), 1990 WL 430756 (S.D. Cal. Dec. 7, 1990) (alternative holding). The plaintiffs in *Zamutt*, in *Cramer*, and in this case were all represented by the same counsel.

[4] Petitioners also suggest that the Court should issue the writ in this case out of deference to Petitioner the State of Kansas because Kansas could have invoked this Court's original jurisdiction over suits between the states and the United States. Petition ("Pet.") at 9. Such jurisdiction is not, however, exclusive. 28 U.S.C. § 1251(b)(2) (1988). Having elected to bring its suit in the district court, Kansas cannot invoke the original jurisdiction it waived in order to make this case appear worthy of certiorari.

In any event, the fact that the State of Kansas is one of the Petitioners does not confer any special status on this case. Kansas

II. THE COURT OF APPEALS CORRECTLY APPLIED SETTLED LAW IN DETERMINING THAT THE LOVE FIELD AMENDMENT IS CONSTITUTIONAL

A. THE LOVE FIELD AMENDMENT DOES NOT VIOLATE THE PORTS PREFERENCE CLAUSE

The Ports Preference Clause, U.S. Const. art. 1, § 9, cl. 6, is an express but limited restriction on Congress' power to regulate interstate commerce. It was adopted at the urging of the Maryland delegation to the Constitutional Convention to prevent Congress from designating Norfolk as the port of entry for all shipping entering the Chesapeake Bay, thus diverting maritime commerce away from Baltimore and other Maryland ports. 3 *Federal Convention Records*, App. A, Cl. v. III. The Ports Preference Clause consists of two subclauses, the so-called "Preferential Regulation Subclause" and the so-called "Enter or Clear Subclause." Petitioners maintain that the Love Field Amendment violates each of these subclauses. As the D.C. Circuit in this case and the Fifth Circuit in *Cramer* properly held, however, the Love Field Amendment does not violate either subclause of the Ports Preference Clause.

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does not raise any complaints based on federalism concerns or on its status as a state. It complains that the Love Field Amendment somehow makes it less convenient for its employees to fly to Dallas, Texas. *Kansas*, 16 F.3d at 439 (Pet. at 5a). Kansas' position in this case is no different from any employer whose employees fly; consequently, Kansas' Petition should not receive special consideration because Kansas happens to be a state.

First, the Love Field Amendment does not confer a "Preference" on Texas and the four states in the Love Field Service Area over the other 45 states in violation of the Ports Preference Clause. The Love Field Amendment simply expresses a preference for one Dallas-Fort Worth region airport, DFW Airport, over another Dallas-Fort Worth region airport, Love Field, with respect to long-haul passenger flights. It has long been settled law that the Ports Preference Clause does not prohibit legislation benefiting one port in one state even when such legislation "may incidentally operate to the prejudice of the ports in a neighboring state . . . . " *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 433 (1856) (Construction of bridge over Ohio River that discouraged river traffic from using Wheeling, West Virginia and favored Pittsburgh, Pennsylvania did not violate the Ports Preference Clause.). *See also South Carolina v. Georgia*, 93 U.S. (3 Otto) 4, 12-13 (1876) (Improvements to Savannah harbor did not violate the Ports Preference Clause because such improvements helped Georgia's ports and hurt South Carolina's ports.); *Alabama Great S.R.R. v. United States*, 340 U.S. 216, 229 (1951) (Ports Preference Clause "does not forbid such discriminations as between ports.").

Any minimal detriment that results from the Love Field Amendment relates to specific airports (Love Field v. DFW Airport) within one region of one state, not to different states. Congress did not enact this legislation in order to benefit Oklahoma, for example, at the expense of Kansas, nor was there any intent to harm the competitive advantage of any state. Contrary to Petitioners' argument, this lack of animus is relevant to determine

whether the effects of the Love Field Amendment embody an actual preference for the ports in one state or whether any such effects are merely incidental to the real purpose of the Love Field Amendment. Because the language and history of the Love Field Amendment plainly evidence a preference for DFW Airport over Love Field, and not a preference for any state or states, the court of appeals properly found that the Love Field Amendment does not violate the so-called Preferential Regulation Subclause of the Ports Preference Clause. *Kansas*, 16 F.3d at 640-41 (App. at 8a-9a). *See also Cramer*, 931 F.2d at 1032 (same); *City of Houston v. Federal Aviation Admin.*, 679 F.2d 1184, 1198 (5th Cir. 1982) (upholding 1000-mile perimeter rule at Washington National Airport because no intent to discriminate against states beyond perimeter).[5]

Second, Petitioners argue that the Love Field Amendment violates the so-called "Enter or Clear Sub-Clause" of the Ports Preference Clause. This argument is unavailing because nothing in the Love Field Amendment requires "Vessels bound to, or from, one state . . . to enter, clear or pay Duties in another." Airplanes are free in general to fly to or from Texas to or from any other state

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[5] As the court of appeals noted, any detrimental effect from the Love Field Amendment on the airports of the 45 states beyond Texas and the Love Field Service Area is limited to the fact that passengers from those states must travel approximately 13 additional miles to get to downtown Dallas from DFW Airport as compared to Love Field if they want single-ticket service to Dallas. *Kansas*, 16 F.3d at 440-41 (App. at 8a-9a). The court of appeals was correct in concluding that this "rather insignificant" preference did not rise to constitutional proportions. *Id.*

without being "obliged" to first stop in another state. *Kansas*, 16 F.3d at 440 (App. at 7a). Moreover, the words "enter" and "clear" have precise, technical meaning relating to customs, and cannot be used broadly, as Petitioners urge, to mean simple arrival and departure. "Enter" means "to deposit a ship's papers at the custom in order to obtain license to land goods." Rene de Kerchove, *International Maritime Dictionary* at 262 (2d ed. 1961). Similarly, "clear" or "clearance" means "the act of clearing a ship entered at the customhouse." *Id.* at 150. *See also Harrison v. Vose*, 50 U.S. (9 How.) 372, 380-81 (1850) ("Yet such a clearance cannot be produced unless the vessel has first entered at the custom-house."); *United States v. Sullivan*, 26 F.2d 606, 608 (5th Cir. 1928) ("A vessel does not make entry by arriving at a port."). As the court of appeals noted, this limited meaning is consistent with the historical purpose of the Ports Preference Clause to prevent Norfolk from becoming the sole port of entry for all shipping entering the Chesapeake Bay. *Kansas*, 16 F.3d at 440 (App. at 7a).

B. THE LOVE FIELD AMENDMENT DOES NOT IMPLICATE PETITIONERS' CONSTITUTIONAL RIGHT TO TRAVEL

The right to travel does not include within its ambit every aspect of interstate travel. A law only implicates the right to travel when: (1) it actually deters all such travel, (2) its primary objective is to impede travel, or (3) it uses any classification that serves to penalize exercise of the right to travel. *Attorney General v. Soto-Lopez*, 476 U.S. 898, 903 (1986). As the court of appeals correctly

determined, the Love Field Amendment does none of these things.

First, the Love Field Amendment obviously does not deter *all* travel to and from Dallas, Texas. The deterrent effect reduces to, at most, the prospect of an additional thirteen miles of travel in order to enjoy single-ticket service to Dallas from certain locations. Even if the Love Field Amendment does deter some travel to and from Love Field, it does not deter travel to and from Dallas-Fort Worth via DFW Airport, nor does it deter travel to the region by any other means, such as car, bus or train. In any event, Petitioners' argument that any deterrent effects of the Love Field Amendment rise to constitutional proportions simply cannot be sustained.

Under Petitioners' rule, tolls on interstate highways and bridges would implicate Petitioners' sweeping right to travel doctrine. Neither logic nor any decision of this Court supports Petitioners' position. *See Soto-Lopez*, 476 U.S. at 921 (O'Connor, J. dissenting) (Plurality "implicitly recognize[d] . . . that something more than a negligible or minimal impact on the right to travel is required before strict scrutiny is applied."). As the court of appeals observed, complaints about regulations of "negligible" and "trivial" impact, including those of Petitioners, simply are not of constitutional significance. 16 F.3d at 442 (App. at 11a-12a). *See also City of Houston*, 679 F.2d at 1198 ("At most, their argument reduces to the feeble claim that passengers have a constitutional right to the most convenient form of travel. That notion, as any experienced traveler can attest, finds no support whatsoever in *Shapiro* or in the airlines' own schedules.").

Second, impeding travel is plainly not the purpose of the Love Field Amendment; its purpose is to "encourage interstate air travel to and from the Dallas-Fort Worth area, by channelling it through the newly built DFW Airport." *Kansas*, 16 F.3d at 441 (App. at 11a). *See also Cramer*, 931 F.2d at 1031 (same).

Finally, the Love Field Amendment does not use any classification that serves to penalize exercise of the right to travel. It merely places certain restrictions on those interstate travelers who choose to use Love Field rather than DFW Airport located just 12 miles away. In addition to being minor inconveniences, these restrictions are a far cry from the blanket denial of important governmental benefits and individual rights at stake in *Shapiro v. Thompson*, 394 U.S. 618 (1969), and the other cases relied upon by Petitioners, which have involved the denial of important rights and benefits to those migrating from one state to another.[6]

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[6] Even assuming the Love Field Amendment implicates the right to travel, Petitioners' argument that *Shapiro* mandates application of a compelling state interest test is incorrect. As this Court's decision in *Sosna v. Iowa*, 419 U.S. 393, 410 (1975), makes clear, where "the gravamen of [the] claim is not total deprivation . . . , but only delay" a rational basis analysis is appropriate. *See also Hawaii Boating Ass'n v. Water Transp. Facilities Div.*, 651 F.2d 661, 665-66 (9th Cir. 1981) ("Since [the failure to provide a berth in the recreational boat harbor at the same rate as a resident] does not involve a 'penalty' on the right to travel or a suspect class, the legislative classification must be tested by the rational basis standard."). The Love Field Amendment plainly survives such analysis.

C. THE LOVE FIELD AMENDMENT DOES NOT VIOLATE THE FIRST AMENDMENT

Because the speech at issue here is purely commercial, the court of appeals was correct in analyzing the constitutionality of the Love Field Amendment under the test set forth in *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980), as developed by *Posadas de Puerto Rico Associates v. Tourism Co.*, 478 U.S. 328 (1986) and *Board of Trustees of State University v. Fox*, 492 U.S. 469 (1989). Under this test, a court reviewing a restriction on commercial speech must first determine whether the governmental interest asserted as a justification for regulating speech is "substantial." *Fox*, 492 U.S. at 475 (quoting *Central Hudson*, 447 U.S. at 566). If the interest is substantial, the court must then " 'determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.' " *Id.* (quoting *Central Hudson*, 447 U.S. at 566). The court of appeals correctly determined that the Love Field Amendment satisfied this test.

First, as the court of appeals held, the government's interest in the Love Field Amendment is substantial. Congress enacted the Love Field Amendment in order to ensure "adequate facilities for interstate air travel in the Dallas-Fort Worth area." *Kansas*, 16 F.3d at 443 (App. at 15a). *See also Cramer*, 931 F.2d at 1034 ("We conclude that Congress had a substantial interest in resolving the dispute between Dallas and Fort Worth, a controversy that had long hindered efforts to improve airline service for the Dallas-Fort Worth area."); *Kansas*, 797 F. Supp. at 1053

(App. at 37a) (same). This is plainly a substantial governmental interest, particularly in light of the unique and exclusive federal role in regulating interstate air travel recognized by this Court and by the lower courts. *See Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944) (Jackson, J., concurring) ("Federal control [of air travel] is intensive and exclusive."); *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 633-34 (1973) (same); *British Airways Bd. v. Port Auth.*, 558 F.2d 75, 83 (2d Cir. 1977) ("[L]egitimate concern for safe and efficient air transportation requires that exclusive control of airspace management be concentrated at the national level.").

Rather than argue that this is not a substantial interest, Petitioners argue that *Posadas* requires an inquiry into the specific interest in regulating speech rather than an inquiry into the governmental interest in the legislation's broader purposes. Pet. at 19. This view is mistaken. For example, in *Posadas* this Court examined the government's interest in regulating gambling, not just its interest in regulating *advertising* of gambling. In any event, the government's interest here in restricting advertising for the very activity it seeks to restrict, long-haul passenger flights to and from Love Field, is plainly coextensive with its interest in the legislation as a whole.[7]

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[7] Petitioners argue, without citation and relying only on what they pejoratively call the "Secret Report," that even if the governmental interest here was substantial, it no longer is and therefore the restrictions have become unconstitutional. This argument is without foundation. First, the so-called "Secret Report" is not in the record in this case, the court of appeals having refused to take judicial notice of it. Second, any changed

Second, the court of appeals properly found that the restrictions on the advertising of long-haul, interstate passenger flights to and from Love Field directly advance the substantial governmental interests in the Love Field Amendment. This Court has repeatedly held, and Petitioners concede, Pet. at 22, that a statute restricting commercial speech in order to reduce demand for something the government has restricted satisfies the "direct advancement" prong of the *Central Hudson* test. *Central Hudson*, 447 U.S. at 557 (holding that restrictions on advertising for electricity would reduce the demand for electricity and therefore directly advance government's interest in reducing consumption of electricity); *Posadas*, 478 U.S. at 341-42 (holding that restrictions on advertising for casino gambling to residents of Puerto Rico directly advanced government's interest in reducing casino gambling by residents). This logic properly formed the basis for the court of appeals' decision in this case. *Kansas*, 16 F.3d at 443 (App. at 13a). *See also Cramer*, 931 F.2d at 1034; *Kansas*, 797 F. Supp. at 1053 (App. at 38a).

Third, the Love Field Amendment's restrictions on commercial speech are "no more broad or no more expansive than 'necessary' to serve its substantial interests." *Fox*, 492 U.S. at 476. The court of appeals correctly applied this test, noting that the Love Field Amendment permits airlines and travel agents to answer consumers' questions about connecting flights beyond the Love Field Service Area and is thus "tailored to be 'in proportion to

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circumstances in interstate travel in the Dallas-Fort Worth area are the proper subjects for legislative consideration, not for judicial review.

the interest served.' "[8] 16 F.3d at 443 (App. at 13a-14a) (quoting *Fox*). *See also Cramer*, 931 F.2d at 1034 (same); *Kansas*, 797 F. Supp. at 1054 (App. at 38a) (same).

Petitioners argue only that the court of appeals erred by not considering less intrusive alternatives to the restrictions on advertising. Pet. at 23. This argument is foreclosed by this Court's clear holding in *Fox* that the "reasonable fit" test does not require the regulation to be "absolutely the least severe that will achieve the desired end." *Fox*, 492 U.S. at 480. *See also City of Cincinnati v. Discovery Network, Inc.*, 113 S. Ct. 1505, 1510 n.13 (1993) ("We have rejected the 'least-restrictive-means' test for judging restrictions on commercial speech . . . . "); *United States v. Edge Broadcasting Co.*, 113 S. Ct. 2696, 2705 (1993) (citing *Fox*, noting applicability of time, place and manner cases to "reasonable fit" prong of *Central Hudson* test).

Finally, Petitioners argue that the court of appeals erred by applying the *Central Hudson* test for commercial speech rather than some heightened standard of review. Pet. at 17. Petitioners' sole basis for this argument is that the Love Field Amendment implicates their constitutional right to travel. Because the Love Field Amendment does not implicate the right to travel, however, Petitioners'

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[8] In addition, the Love Field Amendment does not restrict people other than travel agents or airline employees from speaking freely about such information. Consumers may also learn about connecting flights from publicly available flight guides that list all arrivals and departures by airport.

argument fails by its own terms. *Kansas*, 16 F.3d at 442 n.6 (App. at 13a). *See also Cramer*, 931 F.2d at 1033 n.16.[9]

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[9] Likewise, Petitioners' reliance on *Carey v. Population Services International*, 431 U.S. 678 (1977) and *Bigelow v. Virginia*, 421 U.S. 809 (1975), to support their claim for "strict scrutiny" review is misplaced. This Court's decisions in *Carey* and *Bigelow* turned on a number of factors not present here. For example, the statutes in *Carey* and *Bigelow* restricted political as well as commercial speech. *See Carey*, 431 U.S. at 702 n.28 (The ban was "clearly directed not at any commercial aspect of the prohibited advertising but at the ideas conveyed and form of expression - the core of First Amendment values."); *Bigelow*, 421 U.S. at 822 (The advertisement "did more than simply propose a commercial transaction. It contained factual material of clear 'public interest.' "). Moreover, unlike the underlying activity in *Carey* and *Bigelow* (abortion services), the underlying activity here (interstate air travel from Love Field) can be banned altogether. As this Court stated in *Posadas*, "the greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling, and *Carey* and *Bigelow* are hence inapposite." *Posadas*, 478 U.S. at 345.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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